IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 60 OF 1997

Vandana Hemkant MORE .... Petitioner

versus

General Secretary,
Sevashram Shikshan Sanstha
Mumbai and others .... Respondent.

Mr. Santosh Nalawade i/b. M.M.Vashi for the petitioner
Shri D.B.Patil for Respondent no.2

CORAM; A.P. DESHPANDE, J.
DATED; 6TH MARCH, 2007

JUDGMENT;

1. This petition is directed against the judgment and order passed by the School Tribunal dismissing the appeal filed by the present petitioner, challenging the order of termination issued by the respondent.

2. Undisputedly the present petitioner was appointed with effect from 1-8-1992 and she continued to service as an Assistant teacher till 30th March 1993. The record reveals that after re-opening of the schools the petitioner was appointed for the next academic section 1993-94 and she came to be terminated from service by issuing notice dated 26-3-1994 with effect from 30-4-1994. Aggrieved by the said termination, the petitioner filed an appeal sometime in January 1995 and as there was delay in filing of the appeal, a

prayer for condonation of delay was also made in the appeal itself without filing a separate application.

3. On perusal of the memo of appeal, it reveals that in one breath the petitioner was contending that she is still in service whereas in the other breath she contended that her service stood terminated with effect from 13-6-1994. On this count, the tribunal has observed that the appeal is misconceived. Turning to the merit of the case the tribunal has recorded a finding of fact that the appointment of the petitioner in academic session 1992-93, which is for period commencing from 1-8-1992 to 30-3-1993, was a temporary appointment. On the same terms the petitioner was continued in service for academic section 1993-94. Section 5 sub section (2) of the Act prescribe for deemed permanency on completion of two years of satisfactory service. In the present case, the tribunal has held that the petitioner has not completed two years service, even assuming that the appointment of the petitioner was on probation. I do not find any fault with the finding recorded by the tribunal that the appointment of the petitioner was a temporary appointment and hence cannot be construed an appointment on probation. Even otherwise as rightly observed by the tribunal, the petitioner has not factually completed two years of service in as much as she has served from 1-8-1992 to 30-3-1993 and

thereafter for academic session 1993-94. The tribunal has also refused to condone the delay by holding that the petitioner has failed to show sufficient cause for delay. Be it as it may, the tribunal has dealt with the merit of the matter. The tribunal could not pass an order in regard to condonation of delay prior in point of time, as no application for condonation of delay was filed. I am in agreement with the view taken by the tribunal that the appointment was temporary in nature and that the petitioner has not completed two years of service. There is no case made out that the termination is illegal and unsustainable in law.

4. In the result, the writ petition fails and is rejected. Rule is accordingly discharged.

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